IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 3826 of 1998

Between:

M.Srinivas Rao, S/o Ragavaiah,

Aged about 41 years, R/o Bodhan,

Nizamabad.

..... PETITIONER

AND

1. The Depot Manager, APSRTC,

Kamareddy Depot, Kamareddy,

Nizamabad District.

2. The Regional Manager, APSRTC,

Nizamabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records relating to the impugned order in proceedings No peshi/402/(31)/94-RM-NZB dated 01-11-1995 of the respondent No.2 insofar as denying the full back wages from the date of removal to till the date of reinstatement and other benefits while modifying the appellate order and quash the same as arbitrary and illegal by way of issue of writ of Certiorari with a consequential direction to the respondents to pay the arrears of unpaid subsistence allowance for

the period 07-01-1982 to 20-07-1989 full back wages for the above same period and other benefits.

Counsel for the Petitioner: MR.B.H.R.CHOWDARY

Counsel for the Respondents: MR.V.T.M.PRASAD(SC FOR APSRTC)

The Court made the following :

ORDER:

This writ petition is filed challenging the impugned proceedings No.Peshi/402/(31)/94-RM-NZB dated 01-11-1995 on the file of the second respondent insofar as denying the service of the petitioner from the date of removal till the date of reinstatement.

2. It is the case of the petitioner that he was appointed as driver in APSRTC in the year 1987 and was attached to Kamareddy depot. In the year 1988 he was awarded with merit certificate as a best driver by the Divisional Manager, Nizamabad. While so, on 16-12-1988 he was driving the vehicle bearing No. AAZ 7331 on the route Lingampet to Gandhari, night out service, and when he was stopping the bus at Lingampet bus depot plat-form, there was heavy rush at the bus station. The passengers tried to catch the running bus and tried to reserve their seats in the bus. In one such attempt, one of the passengers i.e., a boy of 12 years old, who had tried to catch the running bus, came and dashed the rear side of the bus, received grievous injuries and subsequently succumbed to the injuries in the Hospital. For this, the petitioner was placed under suspension, a charge-sheet was issued and an enquiry was conducted and thereafter he was removed from service. On filing appeal to the Divisional Manager, Nizamabad, the appeal was allowed, modifying the order, directing reinstatement of the services of the petitioner but with deferment

of annual increment for a period of two years, which shall have effect (permanent) of postponing his future increments and treating the period from the date of removal till the date of reinstatement as not on duty for all purposes. Aggrieved of the same, the petitioner filed a review petition before the Regional Manager, Nizamabad. The Review authority also took further lenience and modified the order of Divisional Manager by proceedings dated 01-11-1995 as deferment of annual increment for a period of two years shall not have its effect of postponing his future increments. Aggrieved by the same, the petitioner filed the present writ petition seeking further relief.

3 . A detailed counter-affidavit has been filed by the respondents denying the allegations made by the petitioner and it is further asserted that the department itself has taken lenient view and relief has already been granted, which does not require any interference by this Court under Article 226 of the Constitution of India.

4. The learned Counsel for the petitioner submits that the very basis for the accident was the negligent act on the part of the boy, who tried to reserve a seat from the window side and in the process fell down and received grievous injuries. The petitioner cannot be found fault with for such injuries received by the victim. In fact, the appellate authority and the review authority modified the termination order only on the basis that the petitioner had a clean record and also the accident, which took place, was beyond the control of the petitioner. Therefore, the denial of the service from the date of removal till the date of reinstatement and treating the same as not on duty for all purposes is arbitrary and illegal. The authorities should have taken into consideration the overall circumstances and allowed continuity of service.

5. Per contra, Sri V.T.M.Prasad, the learned standing counsel for the respondents-corporation, contended that the petitioner was shown very lenient view in view of the fact that the accident cannot be attributed to him and no further lenience can be shown by this Court and the writ petition is liable to be dismissed.

6. I have given my anxious consideration to the respective submissions made by the learned counsel. Since the basis for receiving the injuries by the victims ultimately for which he was succumbed to was his own negligence, nothing can be attributed to the petitioner particularly when such accident occurred during the mid of the night when the boy was trying to reserve his seat through window by climbing the moving bus. It is also curious to note that criminal case, C.C.No.141 of 1989, on the file of

the Judicial First Class Magistrate, Yellareddy, under section 304-A of the I.P.C. ended in honourable acquittal on 06-03-1992. In view of the fact that the authorities themselves have considered that the very accident occurred due to the fact that the victim himself climbed the moving bus in order to reserve a seat from the window side, I am of the considered opinion that the denial of continuity of service is disproportionate punishment and the petitioner is also entitled for continuity of service from the date of removal till the date of his reinstatement for all purposes except for grant of annual increments and other financial benefits. In the result, the petitioner is imposed with a punishment of stoppage of two increments without any cumulative effect, apart from denial of back-wages, notional increments and attendant benefits.

7. Accordingly, the writ petition is allowed to the extent indicated above. No order as to costs.

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C.V.RAMULU, J.

Dated 08-06-2005.

SKMR

..... REGISTRAR

Copy to:

1. The Depot Manager, APSRTC,

Kamareddy Depot, Kamareddy,

Nizamabad District.

2. The Regional Manager, APSRTC,

Nizamabad.

2 CD copies

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